Original to Clerk

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

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| **GORDON ROY PARKER**, a.k.a. **Ray Gordon,** d/b/a **Snodgrass Publishing Group**, 4247 Locust Street, #806 Philadelphia, PA 19104<br><br>Plaintiff,<br><br>v.<br><br>**Learn The Skills Corp.**, et al.<br><br>Defendants. | : | **CASE NO.: 05-cv-2752**<br><br>**Hon. Harvey Bartle, III** |

FILED
OCT 28 2005
MICHAEL E. KUNZ, Clerk
By ____ Dep. Clerk

**CERTIFICATE OF SERVICE**

I, Gordon Roy Parker, hereby certify that I have served the foregoing **Brief In Opposition To Defendant Ross's Motion To Dismiss** on the following Defendants, by the following means:

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This the 28th day of October, 2005.

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HB
III

**IN THE UNITED STATES DISTRICT COURT**
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| **GORDON ROY PARKER**, a.k.a. **Ray Gordon,** d/b/a **Snodgrass Publishing Group,**<br>4247 Locust Street, #806<br>Philadelphia, PA 19104<br><br>Plaintiff,<br>v.<br><br>**Learn The Skills Corp.**, et al.<br><br>Defendants. | :<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>: | **CASE NO.: 05-cv-2752**<br><br>**Hon. Harvey Bartle, III** |

**ORDER**

AND NOW, this ___ day of _____________, 2006, in consideration of **Defendant Paul J. Ross's Motion To Dismiss**, and all responses thereto, the motion is **denied.** A memorandum opinion is attached.

It is further ORDERED that the first two sentences of Defendant Ross's Introduction in his Brief be stricken from the record.

SO ORDERED.

_______________________________
J.

HB III

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

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| **GORDON ROY PARKER**, a.k.a. **Ray Gordon,** d/b/a **Snodgrass Publishing Group,** 4247 Locust Street, #806 Philadelphia, PA 19104<br><br>Plaintiff,<br><br>v.<br><br>**Learn The Skills Corp.**, et al.<br><br>Defendants. | : : : : : : : : : : : | **CASE NO.: 05-cv-2752**<br><br>**Hon. Harvey Bartle, III** |

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**PLAINTIFF'S BRIEF IN OPPOSITION TO**
**DEFENDANT PAUL J. ROSS'S MOTION TO DISMISS**

**Plaintiff** Gordon Roy Parker, in the above-styled action, submits this Brief In Opposition to Defendant Ross's Motion To Dismiss.

Plaintiff has filed an amended complaint in this action, but since the motion was for lack of jurisdiction, submits his arguments against the motion, and requests that this Court hold a hearing so that testimony of Defendant Ross may be taken.

## I. INTRODUCTION

These RICO defendants, while disclaiming conspiracy, seem to follow the identical playbook when attempting to have this and any similar case dismissed: deride Plaintiff, say he has no case, and urge the court to dismiss the matter prior to any possible ruling on the merits, thus short-circuiting the entire process. In this case, Defendant Ross, through his counsel, refers to Plaintiff as being "addicted to litigation," as if the conduct Defendant Ross and the other defendants are alleged to have engaged in, in the Complaint (now amended complaint), were not something that could possibly give rise to litigation. Defendant's view is that Plaintiff should roll over, play dead, and allow a conspiracy led by Defendant Ross to defame him, harass him, threaten him with violence, and claim what is essentially a public internet square as its exclusive marketing turf. Needless to say (but he'll say it anyway), Plaintiff digresses.

Defendant states in its Brief that "Plaintiff has commenced not less than seven (7) actions in this court within the last four (4) years, all relating to a similar set of underlying fact [sic], most, if not all, being summarily dismissed."[1] This is a gross mischaracterization of the actual facts, which have two previous incarnations of this lawsuit dismissed ***without prejudice***, yet Defendant is trying to do just that: prejudice this court against Plaintiff by making a "water cooler argument" designed to appeal to stereotypes rather than logic or facts. While it is true that the facts cited here have been peripherally mentioned in other cases (Parker v. Google,[2] and both incarnations of Parker v. University of Pennsylvania[3]), the previous RICO actions involving some of these defendants were dismissed solely on procedural grounds rather than the merits.

In Parker v. Wintermute, that case was dismissed due to conduct cited in this case (Penn refusing to identify Wintermute despite knowing his identity), but it was not appealed because of the surprise ruling in Scheidler v. NOW, 537 US 393, which precluded RICO claims that did not involve direct economic gain from a Hobbs Act violation. This meant that the conspiracy alleged in the Wintermute case was outside the new boundaries in that it incorporated a politically rather than economically motivated conspiracy that spanned several internet groups rather than ASF alone. The pattern of racketeering activity in this action, by contrast, is exclusively based on economic motivations, and the requirement of "receiving property" being alleged against the conspiracy has been met here. Parker v. LTSC (I), the first incarnation of this case, was dismissed without prejudice only because one of the defendants (Geiger) was ***pro se***, which triggered a heightened requirement for clarity of pleading. The order of dismissal was little more than an order to amend the action and refile, which Plaintiff has.

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[1] Defendant's Brief in Support, p. 1.

[2] E.D.Pa. #04-cv-3918, a case mostly about copyright infringement, republication of defamation, and invasion of privacy.

[3] E.D.Pa. #s 02-cv-567 and 04-cv-4754, which are Title VII cases.

It should finally be noted that the character-assassination of Plaintiff regarding any other cases he has filed is irrelevant to a motion for jurisdiction; this court either has jurisdiction over the Defendant or it does not. Contrary to Defendant's argument, Plaintiff avers that Defendant Ross does have regular contacts with Pennsylvania, and "conducts business" routinely with residents of the Commonwealth. That a "third party entity" such as Straightforward Marketing ships his products for him and processes his orders has little relevance to the issue, since "Speed Seduction" and its related product line, for all intents and purposes, is a "one man show," that show being the man commonly known as "Ross Jeffries," or Defendant Ross.

## II. FACTUAL BACKGROUND

Defendant's "summary" of this case is an oversimplification insofar as while it does explain the basics of the case, it neglects to mention the source of the RICO allegations, namely the numerous threats of violence and overall intimidation of Plaintiff, often by customers or "fans" of Defendant Ross, operating at his direction. The Lanham Act and antitrust claims are based on the "hijacking" of traffic, as Defendant outlines, since Plaintiff considers it highly misleading and actionable for a business, or someone representing products sold by that business, tells posters to a public newsgroup that the group has been "relocated" to a commercial website. This is SPAM of the highest order.

The entire purpose of USENET is to have a decentralized, free-speech zone where no one is dominant, and the ability to post or otherwise conduct one's affairs is restricted only by their ISP's USENET policy, which is almost always liberal. As such, it is the one place where someone cannot be silenced, the one bastion of free expression which remains on the internet.

Any "battle over USENET" is a battle for everything America stands for, most notably the right to speak freely. Defendant Ross, who profits enormously whenever a Speed Seduction product or seminar (he conducts the seminars) is purchased, has a vested interest in quashing dissent, something he can accomplish on the LTSC message boards, but which he cannot accomplish on USENET.

Defendant Ross's claims that Plaintiff is "addicted to litigation" become even more ironic in light of the fact that Defendant Ross himself has threatened many individuals with lawsuits himself, over the very same USENET, and in fact sued a competitor named R. Don Steele back in 1999. Indeed, prior to Plaintiff's arrival at the ASF newsgroup in 1998, Mr. Steele was the previous "bogeyman," and he was targeted by Mr. Jeffries and his followers in a much similar manner. Unlike Mr. Steele, who was sued for trespass of defendant Ross's private customer list, Plaintiff never tripped over any lines, and his more pointed criticisms of speed seduction, and the popularity of his rival e-books, sparked the far more drastic action on Ross's part of sanctioning the creation of LTSC as a "replacement" group (where Plaintiff's voice would be muted), and its marketing as same through the "ASF FAQ" document cited in the Complaint.

## III. ARGUMENT

Defendant Ross is being portrayed as a private citizen residing in another state who has absolutely, positively nothing whatsoever to do with the Commonwealth of Pennsylvania or its residents. In light of the circumstances, this argument is disingenuous at best. In the course of earning his livelihood, and conducting commerce, Defendant Ross has regular and ongoing conduct with Pennsylvania residents, many of whom are his customers, seminar attendees, and who receive ongoing communication from Defendant Ross in the form of his monthly newsletter, which is distributed to the "SS List."

### A. Personal Jurisdiction

Defendant Ross's motion is more or less an attempt to separate himself wholly from Straightforward Marketing, Inc., the "third party entity" cited in his declaration/affidavit. There is no question that this court would have jurisdiction over Straightforward, as it receives money from individuals in the Commonwealth and sells and ships products to same. Plaintiff argues that Defendant Ross should be subjected to the same jurisdiction as Straightforward because his conduct is 99 percent responsible for any business which is formally conducted by Straightforward related to Speed Seduction. Additionally, Defendant Ross has been alleged to take part in a conspiracy where other Defendants are based in and have committed relevant acts within the Commonwealth, or have committed acts which were expressly targeted at the Commonwealth, or where their impact was most likely to be felt.

Defendant Ross, in his Brief (p. 5 III(A)(3)), argues that

> "A plaintiff can not just rely on bald assertions regarding the defendant's contact with the forum state. Carteret Sav. Bank v. Shushan, 954 F.2d 141, 146 (3d Cir. 1992). Rather, a plaintiff is required to present evidence sufficient to establish a prima facie case for the exercise of personal jurisdiction. Mellon Bank v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992), Carteret Sav. Bank, 954 F.2d at 146."

One need not the legal wisdom of a Judge Sirica to conclude, after the most basic review of Carteret, that Defendant is attempting to obfuscate the issue. To wit:

> Inasmuch as ***we write only for the parties*** who are familiar with the background of this dispute, we need not set forth the underlying facts except insofar as may be helpful to our discussion. MoneyGram argues that the district court erred in basing its dismissal on the forum selection clause ***contained in the Agency and Trust Agreement between it and Consorcio Oriental, S.A.***, a privately held Dominican Republic corporation. (Emphasis Added).

The first highlighted text is boilerplate wording for a ***nonprecedential*** opinion (among the weakest of possible citations), while the second shows that the dismissal was based not on some broad concept of law, but instead on a specific agreement between the parties. Defendant Ross's citation of Carteret is self-refuting and irrelevant to this case.

As for Mellon Bank, while that case invokes a precedent, the precedent has nothing to do with the issue at hand. To wit:

> This case presents the jurisdictional question of the ***citizenship of an inactive corporation*** under the federal diversity statute. We conclude that an inactive corporation is a citizen of the state of its incorporation only.

Straightforward is not an inactive corporation. The question here is whether Defendant Ross, as he alleged, has nothing to do with Straightforward. Further, the issue of "evidence" in support of Plaintiff's "assertions" has nothing to do with these cases as well, since in neither case were the underlying facts in dispute. In Carteret, neither side disputed the existence of the agreement of the parties, and in Mellon Bank, the issue of whether or not the corporation was active was not in dispute. Therefore, no evidence needed to be provided, no hearing at which evidence could be submitted and testimony taken needed to be held, and no discovery was needed to resolve the matter. That is not the case here.

When considering a motion to dismiss, all facts averred must be considered in the light most favorable to the Plaintiff (mega-citations omitted). Since Plaintiff has not had the opportunity to conduct discovery, as discovery is not yet open in this case, he would have to take the testimony of Defendant Ross directly at a hearing to produce any evidence. Absent such an opportunity, Plaintiff has only his averments and external evidence from the internet to support his motion. This Court should either hold a hearing on this matter or view Plaintiff's averments in the most favorable light. To do otherwise would violate his right to civil due process.

1. **Piercing The Corporate Veil**

Though not identical in circumstance to this case, the "corporate veil" theory is peripherally relevant here. In Goldenberg v. Royal Petroleum et al. (Phila. CCP #004168, September 2003), the Court cited the relevant precedent:

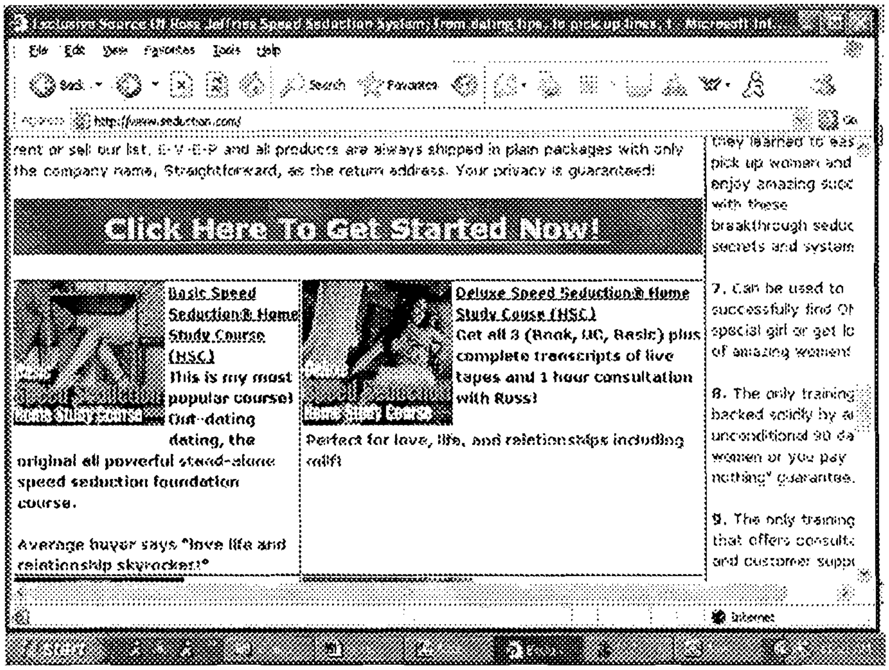
> "The alter-ego theory [of piercing the corporate veil] is applicable where the individual or corporate owner controls the corporation to be pierced and the controlling owner is to be held liable." Miners, Inc. v. Alpine Equipment Corp., 722 A.2d 691, 695 (Pa. Super. 1998).

In this case, Plaintiff is not attempting to attach assets relating to financial transactions (as in Goldenberg), but rather is arguing that Defendant Ross's role in Straightforward's business gives him equal jurisdiction to Straightforward, as his conduct is Straightforward's conduct, and vice versa. Since the claim is conduct-related, ownership of Straightforward is also not relevant. What is relevant is whether or not Straightforward is analogous to an alter-ego of Defendant Ross's inasmuch as they function primarily as a clearinghouse which processes his orders and ships his products, while Defendant Ross "runs the show" that results in the revenue, from which he certainly shares.

2. **Defendant Ross Conducts Business With Pennsylvania.**

In paragraph 11 of his Declaration In Support of the Motion To Dismiss (p. 2), Defendant Ross states that he "has never signed any contract in Pennsylvania or conducted any business in Pennsylvania." This is a conclusion of law rather than a factual averment, as the facts below will show.

Defendant Ross engages in regular contact over the internet and telephone with residents of the Commonwealth in the course of marketing Speed Seduction. His customer base includes residents of the Commonwealth, as have his seminar audiences in the past. More important, any contract or purchase entered into with Straightforward of the "Deluxe" course cited below comes with a one-hour phone consultation with Defendant Ross himself. Consequently, anyone who purchases the deluxe course through Straightforward is also purchasing Defendant Ross's personal time. That alone should convey jurisdiction. Following is a screenshot taken on the date this document was filed, from the Speed Seduction website, which verifies the agreement to provide a phone consultation with Defendant Ross with the purchase of his deluxe course:


http://www.seduction.com/
rent or sell our list. E-V-E-R and all products are always shipped in plain packages with only the company name, Straightforward, as the return address. Your privacy is guaranteed!
Click Here To Get Started Now!
Basic Speed Seduction® Home Study Course (HSC)
This is my most popular course! Out-dating dating, the original all powerful stand-alone speed seduction foundation course.
Average buyer says "love life and relationship skyrocket!"
Deluxe Speed Seduction® Home Study Couse (HSC)
Get all 3 (Book, UC, Basic) plus complete transcripts of live tapes and 1 hour consultation with Ross!
Perfect for love, life, and relationships including milf!
pick up women and
enjoy amazing succ
with these
breakthrough seduc
secrets and system
7. Can be used to
successfully find O
special girl or get lo
of amazing women!
8. The only training
backed solidly by a
unconditional 90 da
women or you pay
nothing" guarantee.
9. The only training
that offers consult
and customer suppo
Internet

Clearly, any resident of the Commonwealth who purchases a product from Straightforward is contractually binding Defendant Ross to have a business-related contact with Pennsylvania. Plaintiff argues that, by any reasonable interpretation, it is beyond question that Defendant Ross conducts business within the Commonwealth through its residents, and "does business in Pennsylvania." Indeed, a personal telephone consultation with Defendant Ross is part and parcel of the Deluxe Home Study Course.

The Western District of Pennsylvania delved rather deeply into the specific issue of internet jurisdiction, In Zippo Mfg. Co. v. Zippo Dot Com. Inc., 952 F. Supp. 1119, 1124 (W. D. Pa. 1997), that court explained:

> At one end of the spectrum are situations where a defendant clearly does business over the Internet. ***If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper.*** At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise [of] personal jurisdiction. The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site.

Defendant Ross's newsletters for his customers on the "SS List" meet the "repeated transmission of computer files" requirement in Zippo, while his telephone consultations meet the contractual requirement inasmuch as the contract made with the customer is made not only by Straightforward, but by Defendant Ross himself, who is required to give the consultation to satisfy the sale contract of the deluxe course.

Defendant's citation of Barrett v. Catacombs Press[4] refers to "e-mail contacts related to the contents of a website." This is not at all analogous to the contractual requirement conferred on Defendant Ross to provide the one-hour phone consultation to customers of his deluxe course, after money has changed hands, money which will in large part wind up in Defendant Ross's personal pockets. Since the consultation is "expressly targeted" at the customer's home state, it is not the same as general contact over a website.

**B. Minimum Contacts**

The facts set forth in A) above are sufficient for the higher standard of "doing business in Pennsylvania." Consequently, Plaintiff argues that these facts and averments meet

[4] 44 F. Supp.2d 717, 729 (E.D.Pa. 1999), Defendant's Brief, p. 6, ¶ III(A)(3)(a).

the lower "minimum contacts" standard, since each telephone contact related to the purchase of the deluxe home study course by a resident of Pennsylvania is a contact.[5]

1. **Internet Activity.** Defendant attempts to argue that Plaintiff is asserting jurisdiction over "direct communication" among the two parties. (Defendant's Brief, p. 8). This is not the case at all. Rather, Plaintiff is arguing that Defendant Ross's business activities related to his product line are what establish jurisdiction, in addition to any arguments based on the Pennsylvania long-arm statute or through the alleged co-conspirators.

2. **Fair Play And Substantial Justice**. Defendant argues that jurisdiction over him by this court would contravene fair play and substantial justice; Plaintiff digresses. Defendant Ross claims great wealth and routinely travels the globe. Appearance at a hearing or two would hardly burden him financially. Defendant claims that there is no "rational basis" because Plaintiff is attempting to assert jurisdiction over "heated internet discussions" when in fact he is arguing based on Defendant's activities related to his business.

It is a long-accepted principle of jurisprudence that one who profits from doing business with customers of a state has every reason to expect to be sued in that state. It is an equally accepted principle that when one engages in conduct such as that alleged in the Complaint, that they can reasonably expect the damages for which they are sued to accrue in the jurisdiction of the target. The conduct set forth in the Complaint includes threats against Plaintiff and defamation designed to turn up whenever people in Plaintiff's daily life (such as potential employers) search for his name on the internet. To hold otherwise would burden Plaintiff into having to literally chase down those who seek to harm him all over the globe, giving them a "license to ambush" Plaintiff in a manner that would drain his resources to the point where it

[5] It should be noted that Defendant Ross has not denied having customers from Pennsylvania, so it should be presumed that he does, given that he has not claimed otherwise in his Affidavit.

would be impossible for him to seek justice. This would allow anyone to be "run off the internet" simply because they lacked the means to file lawsuits all over the globe.

### C. Long-Arm Statute

The Pennsylvania Long-Arm Statute allows for jurisdiction in the Commonwealth to the "fullest extent possible permitted by due process." (Defendant's Brief, p. 3). Plaintiff argues that even in the absence of the other factors for granting jurisdiction over Defendant Ross, the Pennsylvania long-arm statute is sufficient to provide jurisdiction as well. The conduct alleged in the Complaint was expressly targeted to cause damage to Plaintiff in Pennsylvania, by interfering with his housing and potential employment, as well as his social interactions in Pennsylvania.

Defendant Ross directed the affairs of the RICO enterprise, which includes Defendants from Pennsylvania, Defendants who conduct business in Pennsylvania, and directed third parties to make contact with all levels of government, media, law enforcement, and mental health agencies in Philadelphia, while also attempting to interfere with Plaintiff's employment in Philadelphia. Prior to the internet, it was not possible to, for example, burglarize one's home without entering their state, but the internet allows for just that possibility. If it were possible, however, to harm a Pennsylvania resident physically without ever entering the state (and in fact it is possible in some product-liability or medical-malpractice cases), the statute would apply there as it should apply here.

For example, the long-arm statute in Pennsylvania allows for jurisdiction over harassment and stalking when either party is in the state. An act is said to "occur" in Pennsylvania if either party involved is in the state. Thus, the allegations of conduct such as the communication by

"Aardvark" to the entities in Philadelphia, would have jurisdiction here because the acts occurred in this state since one party involved in the communication was located here.

### D. RICO Allows For Nationwide Service Of Process (18 USC §1965)

In Rolls-Royce Motors Inc. v. Charles Schmitt & Co., 657 F. Supp. 1040 (S.D.N.Y. 1987), which involved RICO as well as trademark infringement claims, a district court judge in New York agreed with Rolls-Royce that it had personal jurisdiction over a Missouri car dealership's president, despite the absence of any tort in New York, simply because ***RICO allows for nationwide service of process***:

> "When such nationwide service of process is authorized, a federal district count's jurisdiction is coextensive with the boundaries of the United States, [and] due process requires only that a defendant in a federal suit have minimum contact with the United States."

In ESAB Group, Inc. v. Centricut, Inc., 126 F.3d 617, 629 (4th Cir. 1997), for example, the standard for allowing a Plaintiff to claim jurisdiction due to nationwide service of process is that the RICO claims must not be "immaterial or insubstantial." That is clearly not the case here, as Plaintiff is suing over a "Seduction Mafia" whose structure and operation resembles that of any organized-crime outfit.

Additionally, since the predicate acts alleged in the Complaint occurred in part in Pennsylvania (specifically, Defendant Penn's obstruction of justice with regard to Wintermute), the alleged RICO enterprise has engaged in operations in the Commonwealth which also subject it to jurisdiction.

## IV. CONCLUSION

For the reasons averred herein, the instant motion should be **denied**. Further, even if the motion were granted, dismissal should not be with prejudice, since the claims would be valid in at least one other jurisdiction. The first two sentences of Defendant's Introduction in his Brief should also be stricken from the record as inflammatory. An appropriate form of order is attached.

This the 28th day of October, 2005.

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